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The Right to Trial by Jury in Prosecutions for Petty Federal Offenses

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Constitutional Provisions

One of the great objects of government is to protect the life, liberty and property of individual citizens, and to accomplish this purpose, it is customary for constitutions to limit the powers of the government and thereby operate as bulwarks of liberty for the protection of private rights. In considering the question as to whether a citizen has a right to a trial by jury in a prosecution for a petty federal offense, we must first determine whether or not the Constitution of the United States guarantees a trial by jury in these cases.

In Article 3, Section 2, of the Constitution, we find that the "trial of all crimes, except in cases of impeachment, shall be by jury." The Sixth Amendment to the Constitution provides that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed."

At first glance, it would seem that the question propounded could be easily and quickly answered, and a literal construction of the words used would certainly require a jury in such prosecutions, but the Constitution must be interpreted by reference to the common law and British institutions as they existed when the instrument was framed and adopted,[1] and in this instance, a study of colonial institutions and customs at the time of the adoption of the Constitution is also essential. History plays a most important part in determining what meaning the authors of these provisions designed that they should convey to others.[2]

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* The James F. Brown Prize Essay, 1931-32. In 1919 the late James F. Brown of the Class of 1873 gave $5,000 to the University to be invested and the annual income used as a prize for the best essay on a subject relating to the individual liberties of the citizen guaranteed by the Federal or State Constitution. Any senior or graduate of any college of the University, within one year after receiving his bachelor's degree, may compete for the prize.

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[1] *Ex parte* Grossman, 267 U. S. 87, 45 S. Ct. 332 (1925).

[2] The interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law and are to be read in the light of its history. Smith v. Alabama, 124 U. S. 465, 478, 8 S. Ct. 564, 569 (1888).

Interpretation of Constitutional Provisions

Did the framers of the Constitution intend that the word "crimes" as used in the third article should include petty offenses? Blackstone, writing about twenty years before the adoption of the Constitution, said:

> "A crime or misdemeanor is an act committed or omitted in violation of a public law either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors, which properly speaking, are mere synonymous terms, though in common usage the word 'crimes' is made to denote such offenses as are of a deeper and more atrocious dye, while smaller faults and omissions of less consequence are comprised under the gentler term of misdemeanors only."[3]

With this idea in mind, one can appreciate the action of the Constitutional Convention in drafting the Constitution. The first draft provided that "trial of all criminal offenses shall be by jury," but by unanimous vote, it was amended to read, "the trial of all crimes". If the language had remained as first used, it might be contended that it meant all offenses of a criminal nature, petty as well as serious, but when changed from "criminal offenses" to "crimes" and made in the light of the popular understanding of the word "crimes," as stated by Blackstone, it is obvious that the intent was to exclude from the constitutional requirement of a jury, the trial of criminal petty offenses.[4]

The language of the Sixth Amendment is different from that of Article 3, and shifts from "trial of all crimes" to "in all criminal prosecutions". There is no indication that the framers of the Amendment meant to change the meaning which they expected to be applied to the Third Article. The fears of the people that their rights were not fully secured by the Constitution were to be allayed by the Amendments and the purpose of this Amendment seems to have been to enumerate the rights of the accused in criminal prosecutions. No desire for a change was evident and

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[3] COMMENTARIES 5 (1768).

[4] Schick v. United States, 195 U. S. 65, 70, 24 S. Ct. 826, 827, I Ann. Cas. 585 (1904).

"The word 'crime' in its more extended sense, comprehends every violation of public law; in a limited sense, it embraces offenses of a serious or atrocious character. In our opinion, the provision is to be interpreted in the light of the principles which, at common law, determined whether the accused, in a given class of cases, was entitled to be tried by a jury." Callan v. Wilson, 127 U. S. 540, 549, 8 S. Ct. 1301, 1303 (1888).

only a rearrangement of the language was made.[5] Madison, who framed the Amendment, was a resident of Virginia, where before and after this time, the right of trial by jury was not extended to the accused in prosecutions for petty offenses.

In *Patton v. United States*,[6] the Supreme Court declared that the first ten Amendments and the Constitution were substantially contemporaneous and should be construed *in pari materia.* So construed, the latter may be regarded as reflecting the meaning of the former. The Court specifically decided that the provisions of the Sixth Amendment, although occurring later than that in respect of jury trials in the Third Article of the Constitution, are not to be regarded as modifying or altering the original provisions. The same interpretation, therefore, is to be given to the Third Article and the Sixth Amendment.

The men who framed the Constitution and the first ten Amendments thereto were trained in British law and customs, and brought into this country English laws and ideas. A study of the history of trial by jury in England prior to the time of the adoption of the Constitution is necessary to determine the scope which the framers of the Constitution and the Amendments meant to give the provisions relating to jury trials.[7]

Most great commentators and writers on English law refer to Magna Charta as security for the privilege of trial by jury. Blackstone thought so. Others say that this important document had no reference to jury trial as we understand it,[8] but that it was only intended to give the barons a trial by jury when their lands were taken. While it cannot be said with certainty that the clause had any distinct reference to a jury trial in the true import of the term as we now understand it, it did embody

[5] 1 GALES & SEATON'S HISTORY OF DEBATES IN CONGRESS, pp. 440-463, 690, 730, 796, 809. Madison in debate said: "This, (referring to amount necessary for appeal to the Supreme Court) with the regulations respecting jury trials in criminal cases and suits at common law, it is to be hoped will quiet and reconcile the minds of the people to that part of the Constitution." *Ibid.* 458.

[6] 281 U. S. 276, 50 S. Ct. 253, 70 A. L. R. 263 (1930).

[7] "The statesmen and lawyers of the Convention who submitted it (the Constitution) to the ratification of the Conventions of the thirteen states, were born and brought up in the atmosphere of the common law and thought and spoke its vocabulary." *Ex parte* Grossman, *supra* n. 1, at 267 U. S. 109.

[8] Madison, in the debate on the constitutional amendments, in speaking of trial by jury, freedom of the press, and liberty of conscience, said: "Yet their Magna Charta does not contain any one provision for the security of those rights, respecting which the people of the United States are most alarmed." GALES & SEATON'S HISTORY, *supra* n. 5, at 453.

a principle that underlies that trial and which became established and recognized as a right guaranteed under a stipulation of a royal compact.[9] During the reign of John, we find jury trials in criminal cases, and by the 14th Century, Englishmen recognized the right to have twelve men stand between them and the vengeance of the king in criminal proceedings. The right of trial by jury, however, was drastically limited for two centuries before the separation of the colonies.[10] Blackstone recognized this fact and feared that the limitation of the right to trial by jury had been extended too far.[11] The limited part played by juries in criminal trials in England has continued to the present time and there are now many offenses which are triable summarily by the magistrates.

The practice of providing for the trial of petty offenses by magistrates without the aid of juries was carried into this country and was in general operation prior to the adoption of the Constitution. Massachusetts had one hundred and seventy such offenses; Connecticut had sixty; Pennsylvania, thirty; Maryland, seventy-five and Virginia, sixty-five. New York followed the English practice, and New Jersey listed certain offenses as petty where the penalty was a minor one.[12]

The fact that the practice of trying petty offenses without juries continued after the adoption of the Constitution and the Amendments indicates conclusively that the framers of these provisions did not intend that the constitutional right of trial by jury should be extended to prosecutions for petty offenses before magistrates who had authority to try summarily persons accused of such offenses. That the safeguard applied only in the case of a trial of a person accused of committing a serious offense was evidently the common understanding.

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[9] PROFFATT ON JURY TRIALS (1876) par. 24, pp. 36, 37.

[10] Frankfurter and Corcoran, *Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury* (1926) 39 HARV. L. REV. 917.

[11] "By a summary proceeding, I mean principally such as is directed by several acts of parliament (for the common law is a stranger to it, unless in the case of contempts) for the conviction of offenders, and the inflicting of certain penalties created by those acts of parliament. In these there is no intervention of a jury, but the party accused is acquitted or condemned by the suffrage of such person only, as the statute has appointed for his judge. An institution designed professedly for the greater ease of the subject, by doing him speedy justice, and by not harassing the freeholders with frequent and troublesome attendances to try every minute offense. But it has of late been so far extended, as if a check be not timely given, to threaten the disuse of our admirable and truly English trial by jury, unless only in capital cases." 4 BLACKSTONE, COMMENTARIES (1768) 280.

[12] Frankfurter and Corcoran, *op. cit. supra* n. 10.

The Supreme Court of the United States has passed upon the question of the constitutional guaranty of a trial by jury in prosecutions for petty offenses in several cases, and it seems to be settled that the constitutional guaranties of a jury in the trial of all crimes, and of a right to a speedy and public trial by an impartial jury in all criminal prosecutions do not refer to trials or prosecutions for minor or petty offenses, which according to the common law may be proceeded against summarily.[13] It has been decided that the constitutional right to a trial by jury applies only to cases in which the guaranty existed at common law, or was secured by statute at the time the Constitution was adopted.[14]

What Are Petty Offenses

That there may be offenses called "petty offenses" which do not rise to the degree of crimes is settled,[15] yet it is impossible to define the term "petty offenses" or to list with any degree of certainty those offenses which might be called "petty". In this class of summary proceedings, Blackstone included: (1) Trials of offenses and frauds contrary to the laws of the excise and other branches of the revenue, (2) proceedings before justices of the peace to inflict divers petty pecuniary mulcts and corporal penalties denounced by act of Parliament for many disorderly offenses, such as common swearing, drunkenness, vagrancy, idleness, and a vast variety of others which were formerly tried by jury in the court-leet, (3) methods immemorially used by superior courts of justice of punishing contempts by attachment and subsequent proceedings thereon.[16]

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[13] Callan v. Wilson, 127 U. S. 540, 8 S. Ct. 1301 (1888); Lawton v. Steele, 152 U. S. 133, 14 S. Ct. 499 (1894); Schick v. United States, 195 U. S. 65, S. Ct. 826, 1 Ann. Cas. 585 (1904); District of Columbia v. Colts, 282 U. S. 63, 51 S. Ct. 52 (1930); Low v. United States, 94 C. C. A. 1, 169 Fed. 86 (C. C. A. 6th, 1909).

[14] Thompson v. Utah, 170 U. S. 343, 18 S. Ct. 620 (1898); Capital Traction Company v. Hof, 174 U. S. 1, 19 S. Ct. 580 (1898); Patton v. United States, *supra* n. 6; District of Columbia v. Colts, *supra* n. 13. See other cases cited in 16 R. C. L. 194 and 6 R. C. L. Perm. Supp., 1932 Supp., p. 795.

[15] "That there may be many offenses called "petty offenses" which do not rise to the degree of crimes within the meaning of Article 3, and in respect of which Congress may dispense with a jury trial, is settled." District of Columbia v. Colts, *supra* n. 13, citing Schick v. United States, *supra* n. 13. See Natal v. Louisiana, 139 U. S. 621, 624, 11 S. Ct. 636 (1891); Lawton v. Steele, *supra* n. 13; State v. Rodgers, 91 N. J. L. 212, 214, 102 Atl. 433 (1917).

[16] 4 BLACKSTONE, COMMENTARIES, c. 20, p. 281.

Offenses triable summarily in the Colonies included; profanity, drunkenness, Sabbath statutes, immorality, vagrancy, disorderly conduct, scolding, illicit sale of liquor, fraudulent weighing, failure to observe standards fixed for certain commodities, swearing rashly and vainly, selling liquor to Indians, hunting and fishing, fornication, concealed weapons, clamorous scolding, blasphemy, roguery, petty threatening of harm to persons and goods, residing among Indians, adultery, improper care of servants, profanation of holy days, eating flesh in Lent, and many others of like nature.[17]

The right of trial by jury for contempt never existed at common law and it has always been held that courts have the right to punish contempts summarily and without a jury except where expressly provided for by statute.[18]

The rule seems to be settled that the constitutional right of trial by jury does not apply to violations of municipal ordinances, at least where the offensive act is not also a violation of the criminal laws of the state, and so violators of municipal ordinances generally are not held entitled to a jury.[19]

It has been held that the sale of oleomargarine without a stamp, where the penalty was fifty dollars fine, is a petty offense and may be classed with such offenses as acting as an auctioneer or peddler without a license, or making a deed without affixing

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[17] Frankfurter and Corcoran, *op. cit. supra* n. 10.

[18] *Ex parte* Robinson, 19 Wall. 505, 22 L. ed. 205 (1874). See numerous cases cited in Note (1931) 75 L. ed. (U. S.) 177, 185; 4 BLACKSTONE, *loc. cit. supra* n. 11. Under Article 3, Section 2, held that equity court cannot adjudge defendant guilty of bootlegging as basis for granting an injunction so as to punish for contempt for a subsequent violation under National Prohibition Act. United States v. Cunningham, 21 Fed. (2d) 800 (D. Neb. 1927).

[19] See Natal v. Louisiana, *supra* n. 15 (keeping private market within six squares of public market). See cases cited in Note (1931) 75 L. ed. (U. S.) 177.

"Violations of municipal by-laws proper, such as fall within the description of municipal police regulations, as for example, those concerning markets, streets, water works, city officers, etc., and which relate to acts and omissions that are not embraced in the general criminal legislation of the state, the legislature may authorize to be prosecuted in a summary manner, by and in the name of the corporation, and need not provide for a trial by jury. Such acts and omissions are not crimes or misdemeanors to which the constitutional right of trial by jury extends." 1 DILLON ON MUNICIPAL CORPORATIONS (3d ed. 1881) § 433, quoted in Callan v. Wilson, *supra* n. 13.

There is not a state in the Union which has not a constitutional provision entitling persons charged with crime to a trial by jury, and yet from time immemorial the practice has been to try persons charged with petty offenses before a police magistrate, who not only passes upon the question of guilt but metes out the proper punishment. Lawton v. Steele, *supra* n. 13.

the proper stamp.[20] The abatement of public nuisances by summary proceedings has been approved.[21]

Libel,[22] reckless driving so as to endanger life and property,[23] and conspiracy[24] have been classed as serious offenses or crimes within the meaning of the Constitution. An offense under the National Prohibition Act which carried punishment to the extent of $1000.00 fine and twelve months imprisonment, was held not to be a petty crime,[25] and it has been said that where the term of imprisonment is one year, it is a crime.[26] It was held in another instance that for any criminal offense for which a person is liable to infamous punishment, a trial by jury cannot be denied the defendant.[27] In *Schick v. United States,*[28] the court stated that the nature of the offense and the amount of punishment prescribed rather than its place in the statutes determine whether it is to be classed among serious or petty offenses, whether it is a crime or misdemeanor. This does not mean that all misdemeanors are petty offenses.[29] In the *Colts* case,[30] the court said that whether an offense shall be classed as a crime so as to necessitate a jury trial, or a petty offense triable summarily by a magistrate, is dependent primarily upon the nature of the offense.

There is no yardstick or formula with which to determine whether an offense is a petty or serious one; the decision to be rendered in a particular case depending upon the judgment of the court rather than upon the application of a mechanical test. It cannot be said that all the offenses which were listed as petty at the time of the adoption of the Constitution are petty offenses today, for in some cases, what was a petty offense then has since become a serious one. Nor would it be logical to conclude that only those offenses which were petty then should be called petty now, for offenses which have been created since that time may

[20] Schick v. United States, *supra* n. 13.
[21] Lawton v. Steele, *supra* n. 13.
[22] Willis v. O'Connell, 231 Fed. 1004 (S. D. Ala., 1916).
[23] District of Columbia v. Colts, *supra* n. 13.
[24] Callan v. Wilson, *supra* n. 13.
[25] Coates v. United States, 290 Fed. 134 (C. C. A. 4th, 1923).
[26] Low v. United States, *supra* n. 13.
[27] Danner v. State, 89 Md. 220, 42 Atl. 965 (1899).
[28] *Supra* n. 13.
[29] "It would be a narrow construction of the Constitution to hold that no prosecution for a misdemeanor is a prosecution for a crime within the meaning of the Third Article or a criminal prosecution within the meaning of the Sixth Amendment." Callan v. Wilson, *supra* n. 13, at 127 U. S. 549.
[30] *Supra* n. 13.

well be classed as petty.[21] It has been held that if an offense belongs to the "classes of cases" which were triable by a jury at the time of the adoption of the Constitution, they should now be tried by a jury, and if an offense belongs to the "classes of cases" which were triable summarily, then the constitutional guaranties do not apply.[22]

Acts seem to have been dealt with summarily which did not offend too deeply the moral sense of the community, and which were not considered as offenses of grave character. A distinction has been made between acts which are *"malum prohibitum"* and those which are *"malum in se."*[23] The question of moral delinquency and the punishment to be meted out have also been factors in the classification of offenses. Social standards have changed since the adoption of the Constitution and it is suggested that present day rules of conduct, as well as the experiences of the common law, may well be taken into consideration in determining the status of a particular act and its classification as either a serious or a petty offense.

Trial by Jury in Federal District Courts

The fact that the Supreme Court of the United States has held that there are some offenses called "petty offenses" which according to the common law may be proceeded against summarily in a "tribunal legally constituted for that purpose"[24] or "before a magistrate without a jury"[25] does not mean that there is no right to a jury trial in a prosecution for a petty federal offense. The federal district court has jurisdiction of all "crimes and offenses" cognizable under the authority of the United States, and the question to be answered is whether or not in a prosecution for a petty offense, the accused has a right to a trial by jury in the federal district court. The decisions of the Supreme Court have not gone this far. A review of the decisions which have been rendered so far in the cases involving the constitutional right to trial by jury in prosecutions for petty offenses

[21] The general rule stated is not to be narrowly construed, however, for constitutional provisions may very properly be constructed as not limiting the right strictly to those cases in which it had existed before the adoption of the Constitution, but may further extend it to such new cases of like nature as may afterwards arise. Colon v. Lisk, 153 N. Y. 188, 47 N. E. 302, 60 A. S. R. 609 (1897).

[22] McInerney v. Denver, 17 Colo. 302, 29 Pac. 516 (1896).

[23] District of Columbia v. Colts, *supra* n. 13.

[24] Callan v. Wilson, *supra* n. 13.

[25] District of Columbia v. Colts, *supra* n. 13.

will throw some light on the Court's attitude towards this matter and possibly furnish material on which to base a prediction as to the Court's action were the question presented squarely to it.

In *Callan v. Wilson*,[86] the accused was tried in the police court of the District of Columbia for conspiracy. By statute, the test as to whether the accused was entitled to a jury was his right to a jury under the Constitution. The Court held that conspiracy was not a petty offense and the accused should have the right to a jury trial:

> "Except in that class or grade of offenses called petty offenses which according to the common law, may be proceeded against summarily *in any tribunal legally constituted for the purpose*, the guarantee of an impartial jury to the accused in a criminal prosecution conducted either in the name of or by or under the authority of the United States, secures to him the right to enjoy that mode of trial from the first moment and in whatever court he is put on trial for the offense charged."

In his dissent in *Schick v. United States*,[87] Mr. Justice Harlan points out that for the exception as to jury trial to apply, the case must be tried "in a tribunal legally constituted for the purpose." He contends that the offense must be a petty offense and in order that it may be tried without a jury there must be legislative authority to that effect.[88] He cites the *Callan* case as authority.

In the *Schick* case,[89] which involved the trial of the defendant in the federal district court for selling oleomargarine without a stamp, the question arose as to whether the defendant could waive his right to trial by jury. The Court decided that this was a petty offense and that the right could be waived. The decision seems to have been worked out by deciding that a petty offense was not a crime under Article Three of the Constitution, therefore, the defendant had no right to a jury trial, and that since the Sixth Amendment provided for trial by jury and also pro-

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[86] *Supra* n. 13.
[87] *Supra* n. 13.
[88] Justice Harlan's holding was that no criminal offense or crime against the United States can be tried except by jury, if the plea is not guilty, unless it be a petty offense or crime and unless the legislative department declares that it may be so tried. He cites Blackstone to the effect that the common law was a stranger to all summary proceedings and they were authorized only by act of Parliament. See n. 11, *supra*.
[89] *Supra* n. 13.

vided for confrontation of witnesses and the employment of counsel, and the latter rights could be waived, then the right of trial by jury could be waived.

> "There is no act of Congress requiring that the trial of all offenses shall be by jury, and a court is fully organized and competent for the transaction of business without the presence of a jury. There is no public policy which forbids the waiver of a jury in the trial of petty offenses."

In *Patton v. United States*,[40] the Court held that the accused may waive the right to trial by jury in a prosecution for a serious offense. It was again decided that the constitutional right to a jury trial is not jurisdictional but only a right given to the accused, which he may waive. It was pointed out that the first ten Amendments and the original Constitution are to be construed *in pari materia*. It might be argued that since the *Schick* case decided that there was no right to a jury trial in a prosecution for a federal petty offense under Article Three of the Constitution and the *Patton* case decided that the Sixth Amendment is to be construed in the same manner, there is no right to a trial by a jury in the federal district court. It may be suggested, however, that the decisions should not be taken to mean more than they absolutely decide, namely, that the right to a jury trial may be waived.

The *Colts* case[41] arose in the police court of the District of Columbia, where the defendant was fined for reckless driving. It was decided that driving an automobile so as to endanger life and property was a serious offense and the accused had a right to a jury trial. The statements of the Court have a direct bearing on our problem:

> "Article 3 is to be interpreted in light of the common law, according to which petty offenses might be proceeded against summarily before a magistrate sitting without a jury.
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> "There are many offenses designated as petty offenses which do not rise to the degree of crimes within the meaning of Article 3, and in respect of which Congress may dispense with a jury trial."

It is to be noted that the *Callan* case holds that a petty offense may be proceeded against summarily "by a tribunal legally constituted for the purpose" and in the *Colts* case, it is said

[40] *Supra* n. 13.
[41] *Supra* n. 13.

that it may be proceeded against summarily "before a magistrate sitting without a jury". It was never the intent of the framers of the Judiciary Act[42] to make the federal court a summary tribunal or to treat the judge of the district court as a magistrate for the trial of petty offenses,[43] and for this reason, legislative enactment is deemed essential[44] in order that a jury trial may be dispensed with in the federal district court, in case it is demanded. Jury trials in the federal courts have been the rule from time immemorial[45] and allowing a man to waive a right which he has is quite different from taking from him that which he has considered as a right since the foundation of the court.

The *Colts* case is authority for believing that Congress may dispense with jury trials in prosecutions for petty offenses. It would seem that legislation making the present district courts legal tribunals for the summary trial of petty offenses, or legislation creating other tribunals with special summary powers, would be declared constitutional.[46]

When the federal district courts were first established in 1789,[47] and for many years thereafter, there were but few crimes triable in this court,[48] and these were of a serious nature.[49] Within the past few years, the number of crimes or offenses triable

[42] I Stat. 73 (1789).

[43] Debates in Congress indicate that the district courts were to be compared to the State courts and it was even provided that jurors in these courts should have the same qualifications as those required for jurors in the highest state courts. One objection to the establishing of these courts was that state courts were already organized and could take care of the business which these courts were designed to handle. See 1 GALES & SEATON'S HISTORY, *supra* n. 5 at 829 *et. seq.*

[44] The district courts having only such jurisdiction as is expressly authorized by Congress under the Constitution, have no common law jurisdiction to try and punish crimes. 9 HUGHES, FEDERAL PRACTICE (1931) 13.

[45] It was even thought, before the decisions in the Schick and Patton cases, that jury trial could not be waived.

[46] The first plan suggested is not recommended and possibly its constitutionality might be questioned. Such a plan would detract from the dignity of the court and would not relieve the congestion now prevalent to any extent.

[47] *Judiciary Act, supra* n. 42.

[48] The First Congress and the Second Congress passed no laws providing for the trial of crimes in the district courts. The jurisdiction of the courts was set forth in the original act but no crimes were created of which the district court had jurisdiction.

[49] The jurisdiction of the district court was quite limited at the beginning; the main reason for establishing the court seemed to be that some court was necessary for admiralty and maritime cases. This jurisdiction was increased and later the district courts were given jurisdiction of all crimes and offenses.

under federal laws has increased to an enormous extent. At present, it might be said that much of the work of a criminal nature done by the federal courts is such as is performed by police courts and justices of the peace.[50]

It is not the purpose of this paper to discuss the recommendations which have been made for reducing the work of the federal courts, and for providing especially for the trial of minor violations of the National Prohibition Act.[51] The problem of devising some plan for relieving this congestion is now being studied both by the National Commission on Law Observance and Enforcement and federal officials. Should it be decided that the best means of reducing the labor of the federal courts is to provide federal police magistrates, it is submitted that the decisions pave the way for the rendering of a decision in the future to the effect that there is no constitutional guaranty of a right to trial by jury in prosecutions for petty federal offenses in the tribunals thus established.

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[50] Lawyers everywhere deplore, as one of the most serious effects of prohibition, the change in the general attitude toward the federal courts. Formerly these tribunals were of exceptional dignity, and the efficiency and dispatch of the criminal business commanded wholesome fear and respect. The professional criminal, who sometimes had scanty respect for the state tribunals, was careful so to conduct himself as not to come within the jurisdiction of the federal courts. The effect of the large volume of liquor prosecutions, which has come to these courts under prohibition, has injured their dignity, impaired their efficiency, and endangered the wholesome respect for them which once obtained. Instead of being impressive tribunals of superior jurisdiction, they have had to do the work of police courts and that work has been chiefly in the public eye. These deplorable conditions have been aggravated by the constant presence in and about these courts of professional criminal lawyers and bail-bond agents, whose unethical and mercenary practices have detracted from these valued institutions. Report on the Enforcement of the Prohibition Laws of the United States, National Commission on Law Observance and Enforcement, 71st Congress, 3d Session, H. R. Doc. No. 722, p. 56 (1931).

In the year ending June 30, 1930, according to a memorandum supplied by the Bureau of Prisons of the Department of Justice, 62 per cent of all Federal prisoners received during the year were committed for sentences of less than six months. The average sentence for all Federal prisoners received during the year was 117 days or just under four months . . . . Thus it is evident that petty prosecutions have at least come to bulk very large in the work of the Federal courts. The Federal courts were not organized with an eye to criminal business of this sort and have been conducted for over a century with reference to a different type of causes. Report on Criminal Procedure, National Commission on Law Observance and Enforcement, No. 8, pp. 7, 8 (June 9, 1931).

[51] See Report of National Commission on Law Observance and Enforcement, 71st Congress, 2d Session, H. R. Doc. No. 252, pp. 9 - 12, 17 - 25.